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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/735,572	12/12/2000	Eric Edwards	80398.P360	5737

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EXAMINER

SAJOUS, WESNER

ART UNIT	PAPER NUMBER
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2628

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/05/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 09/735,572	Applicant(s) EDWARDS ET AL.	
	Examiner Sajous Wesner	Art Unit 2628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 14-22 and 27-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-30 is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Remark

This communication is responsive to the amendment and response dated December 19, 2006. Claims 1-9, 14-22, and 27-30 are presented for examination.

Response to Arguments

1. In response to the Applicant's argument that the Yamada reference does not teach "suggesting a color based on generated histogram to serve as the color for a template design used to display the ... source image" because the histogram of RGB values taught by Yamada is used to select N highly used, representative colors of the image, not the template design as claimed, as in page 3, lines 47-66 of Yamada (see paragraphs 4 and 5 of the response). The Examiner respectfully disagrees. Firstly, the Yamada patent is represented by lines and columns and not page numbers, thus, the page number cited in the response to support the argument is not found in Yamada. Secondly, assuming the cited section of Yamada was correct, it would not overcome the argument that Yamada's histogram is not used to select color for the template design, because the representative colors that serve for color selection for the modified image are clearly depicted by Yamada (see fig. 2) to be derived from the generated histogram. And, as suggested in the previous office action, and because the claim language as presented fails define what is being encompassed by the phrase "color template design", the Examiner broadly interprets such a phrase to correspond to the modified image pixels and/or modified image B with 7 representative colors, as described in col.

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7, lines 1-6. In addition, col. 6, line 47 to col. 7, line 7 of Yamada suggests that the modified image pixels and/or modified image B includes one of a foreground, background portion displayed with image. Thus, the Applicant's argument is not deemed persuasive.

Regarding the argument for claims 14 and 27, it is noted that because Yamada's generated histogram that serves as the color for the modified image B is not separate or distinct a source image and operated as one of a foreground and background portion, it is submitted that the subject matters recited in claims 14 and 27 is allowable over the prior art.

All other arguments presented in the 12/19/06 response/amendments are moot in view of the rejections below.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 27-30 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Although the claim recites a computer-readable medium with computer-executable instructions to perform a specific task, the claim fails to recites that the computer-readable medium is associated with or encoded with a computer program that is stored in a storage medium with instructions capable of being executed by a computer. The omission of the above acceptable language

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renders the claim to lack non-statutory subject matter. Hence the subject matters of claim 27 do not meet the eligibility requirement of 35 USC 101.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1-4, 8-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Yamada (US 6407745).

Considering claims 1 and 3, the Examiner interprets Yamada to disclose a computerized method for generating a color template design comprises generating a histogram for a source image (S22, fig. 2, col. 6, lines 49-51) and suggesting a color for subsequent user selection based on the generated histogram (S23) to serve as the color for the template design used to display a source image, and displaying at least

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one template design and at least one color for the template design (see col. 6, line 47 to col. 7, line 7, wherein the template design corresponds to the modified image pixels and/or modified image B).

As per claim 5, Yamada discloses applying a color is selected from a group consisting of background, and foreground portions of the template design. See col. 6, line 47 to col. 7, line 7.

Considering claims 8 and 9, Yamada discloses providing at least one color for selection by selecting from a group consisting of multiple colors and presenting the colors for selection concurrently by allowing the user to select at least one of the provided colors. See col. 6, lines 47-54.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2, 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamada (US 6407745) in view of Sako (US5689575).

Regarding claim 2 fails to teach a color that is automatically selected to match a color of the source image.

Sako discloses a color that is selected to match a color of the source image (e.g., determine which color that occurs more frequently in the input image based on

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histogram values from a group of similar colors represented by the box in the histogram. See col. 5 lines 61 to col. 6 line 23. Note that in determining the color that is used in the input image based on the group of similar colors in the box histogram, the system inherently selects and match a color of the color histogram with the input or source image automatically).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Yamada to suggest the color matching in the same conventional manner as taught by Sako, in order to improve color quality in the template design.

As per claim 4, Sako discloses a selected portion of the source image is used to generate the histogram. *(It is noted that since the system at step 22 detects a facial area of the captured image (see col. 4, lines 60-61) and later, at step 22e, generates a histogram using the input image (see fig. 14 and col. 6, lines 58-61), it is obvious that a selection portion of the source image need be selected for the generation of the histogram. See the depiction at fig. 14 in which an area portion $[p(x, y)]$ of the input image is utilized for the generation of histogram).*

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamada (US 6407745) in view of Sparks et al. (US 6167382).

As per claim 7, Yamada discloses most claimed features of the invention but he fails to teach receiving compensation for providing the template design.

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Sparks teaches receiving compensation (e.g., a price) for providing the template design (e.g., template slots). See col. 22, lines 8-25.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the color histogram template of Yamada and to include a software for receiving compensation for providing the template design, in the same conventional manner as taught by Sparks' col. 22, lines 8-25; so as to provide an integrated system that allows a user to place order at a dedicated Internet site for image templates used for the design and distribution of commercial display materials. See Sparks' col. 1, line 66 to col. 2, line 4.

9. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamada in view of Jammes et al. (US 20030167213).

Considering claim 6, Yamada discloses most claimed features of the invention, but he fails to teach executing an Internet browsing application and generating a web page containing data that displays information selected from a group consisting of color template design data, advertisements, banners, text, etc....

Jammes discloses executing (102/112, fig. 1) an Internet browsing application (see paragraph 85) and generating (102) a web page containing data that displays information selected from a group consisting of color template design data (e.g., template background color or pattern), advertisements (e.g., display information about groups or products to a consumer, see paragraph 10), banners (e.g., logo), text (e.g.; textual tile). See paragraphs 305, 330, 343 and 358.

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Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the color histogram template of Yamada to include the executing an Internet browsing application and generating a web page containing data that displays information selected from a group consisting of color template design data, advertisements, banners, and text in the same conventional manner as taught by Jammes; in order to allow a user with average technical knowledge to efficiently and easily design and maintain an electronic store over the internet. See Jammes' paragraphe 4.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

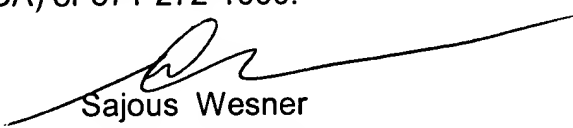
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sajous Wesner whose telephone number is 571-272-7791. The examiner can normally be reached on M-F 9:15-6:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Razavi can be reached on 571-272-7664. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Sajous Wesner
Primary Examiner
Art Unit 2628

WS
1/26/07